

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

No.

| | | |
|-------------------------------|---|-----------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | COMPLAINT |
| |) | |
| v. |) | |
| |) | |
| HARVEY FERTILIZER AND GAS CO. |) | |
| |) | |
| Defendant. |) | |

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, alleges as follows:

1. This is a civil action brought by United States on behalf of the Department of Agriculture, Farm Service Agency, by and through the United States Attorney for the Eastern District of North Carolina, for declaratory relief. Jurisdiction of this Court is invoked under 28 U.S.C. § 1345 and 28 U.S.C. § 2201.

2. Defendant Harvey Fertilizer and Gas Co. is a North Carolina Corporation with a principal mailing address of 1321 U.S. Highway 258 North, Kinston, North Carolina, 28504.

3. The Registered Agent of Defendant Harvey Fertilizer and Gas Co. is Richard A. Holder, who has a mailing address of 1321 U.S. Highway 258 North, Kinston, North Carolina, 28504.

4. This civil action is brought to determine the priority of the Plaintiff's lien as to the proceeds from a liquidation sale

conducted on May 3, 2010.

5. On April 28, 2008, Plaintiff executed a Security Agreement with Walker Farms Partnership, which Security Agreement was also executed by Gideon Ray Walker and Gideon Ray Walker, Junior, individually, designating themselves as debtors. The address of Walker Farms Partnership is 654 NE Church Road, Mount Olive, North Carolina. The Security Agreement is attached as Exhibit A. In consideration for a loan from Plaintiff to the Debtors, Debtors granted Plaintiff a security interest in, inter alia, crops, plant and farm products, and livestock. Debtors also gave Plaintiff an interest in "[a]ll farm and other equipment . . . and inventory, now owned or hereafter acquired by Debtor . . . ," including a specific list of equipment items. Exhibit A at 2-3.

6. As part of the Security Agreement, Walker Farms Partnership, through Gideon Ray Walker and Gideon Ray Walker Junior individually, warranted, covenanted, and agreed that it "is the absolute and exclusive owner" of the collateral listed in the Agreement. Id. at 5.

7. On April 28, 2008, Plaintiff filed a UCC-1 financing statement with the North Carolina Secretary of State. The financing statement is attached as Exhibit B.

8. On May 1, 2009, Defendant purportedly entered into a security agreement with Walker Farms Partnership, Ray Walker Junior, and Geneva B. Walker, attached as Exhibit C. On the same

day, Defendant filed a UCC financing statement with the North Carolina Secretary of State, attached as Exhibit D.

9. Debtor ceased farming operations in April of 2010.

10. On May 5, 2010, Debtor held a liquidation sale of its assets. The net proceeds of the sale were \$43,016.70.

11. Plaintiff's lien and security instrument are superior in priority to Defendant's.

WHEREFORE, Plaintiff asks this Court to find that Plaintiff has a first priority lien on the proceeds from the May 5, 2010, liquidation sale and to order such other relief as may be appropriate.

Respectfully submitted, this 18th day of August, 2011.

THOMAS G. WALKER
UNITED STATES ATTORNEY

By: /s/ Seth M. Wood
SETH M. WOOD
Attorney for Plaintiff
Assistant United States Attorney
Civil Division
310 New Bern Avenue, Suite 800
Raleigh, NC 27601-1461
Telephone: (919) 856-4530
Facsimile: (919) 856-4821
E-Mail: seth.wood@usdoj.gov
D.C. Bar No. 491011